IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 377 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RANJITSINH GHANSHYAMSINH JADEJA

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 377 of 2002

MR HN JHALA for Petitioner No. 1

MR ND GOHIL, PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 19/06/2002

ORAL JUDGEMENT

1. By means of filing this petition under Articles 226 and/or 227 of the Constitution of India, petitioner who claims to be the owner of the muddamal articles (i.e. projector, screen, amplifier and all other accessories)

which were seized by Pradyumna Nagar Police Station during the raid has brought under challenge the order dated 3rd May, 2002 passed in Criminal Revision Application No.38/2002 by the learned Sessions Judge, Rajkot, confirming the order dated 29th April, 2002 recorded below application tendered by the petitioner for taking back the possession of the said projector, screen, amplifier including all other accessories, under the provisions of Section 451 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') by the learned Chief Judicial Magistrate, Rajkot. By the said order, learned Magistrate rejected the said application.

2. It is stated in the application that on 19th April, 2002 one Mansukhlal Babulal Surani, Police Head Constable attached to Pradyumna Nagar Police Station lodged a complaint at the said police station for commission of the alleged offences punishable under Sections 292, 293 and 114 of the Indian Penal Code as well as for commission of the alleged offences punishable under Section 3 of the Young Persons (Harmful Publications) Act, 1956, and while conducting the said raid, wherein, it is alleged that the accused no.1 (non-petitioner) was exhibiting blue films at the video parlour, seized the articles namely, (i) C.D. Player of Pagaria Company with remote, (ii) C.D., (iii) Projector of Sharp Company and (iv) 16 mm. white screen on which the film was being shown. It is stated by the petitioner that he is the owner of the above seized muddamal articles and who had given the said muddamal articles to the original accused no.1 on rental basis. He made an application to the learned Chief Judicial Magistrate claiming release of the said muddamal in his favour. The learned Magistrate, after hearing the learned advocate for the petitioner and the learned APP, by an order dated 29th April, 2002 rejected the said prayer of the petitioner. The petitioner has carried the matter before the learned Sessions Judge, Rajkot by filing Criminal Revision Application No.38/2002 under Section 397 of the Code. The learned Sessions Judge, Rajkot, after hearing the learned advocate for the petitioner as well as the learned APP, rejected the said Revision Application vide order dated 3rd May, 2002. While rejecting the said application, the learned Sessions Judge ordered that the said muddamal be handed over to the President of the Rajkot Bar Association for the purpose of educating young lawyers by the help of said muddamal. It is this order which has given rise to the present petition at the instance of the original applicant.

3. Mr.Jhala, learned counsel for the petitioner

contended that complaint has not been lodged against the petitioner. The petitioner has given the said muddamal articles on rental basis to the accused no.1. Therefore, he has no knowledge about the said illegal activities carried out by the main accused. What is emphasised by the learned counsel is that, the orders passed by both the authorities below are arbitrary, illegal, perverse and passed without application of mind, in as much as that the muddamal of an offence is ordered to be handed over to the President of the Rajkot Bar Association for utilizing the same. It is also emphasised by the learned counsel that the petitioner has not committed any offence and he is not guilty of any offence and therefore, the muddamal which was seized in certain offence could not have been ordered to be handed over in the custody of the President of the Rajkot Bar Association, who is in no way connected or concerned with the present offence nor is authorized under law to retain any muddamal seized in any offence. Besides this, learned counsel also tried to point out that the Young Persons (Harmful Publications) Act, 1956 is not at all applicable to the facts of the present case. Similarly, Section 293 of the Indian Penal Code also does not apply to the facts of the case as none of the persons watching the film were below 20 years. The sum and substance of submission of the learned counsel is that there is no offence alleged against the present petitioner and he has no knowledge about the activities of the main accused no.1, who was allegedly exhibiting blue film at the relevant point of time on the projector which was rented by the petitioner to him. Learned counsel, therefore, urged that the order passed by the learned Sessions Judge confirming the order of the learned Magistrate is required to be quashed and set aside and the Special Criminal Application may be allowed and thereby the muddamal articles may be handed over to the present petitioner on any suitable terms and conditions which may be deemed fit by this Court.

4. Mr.N.D.Gohil, learned APP who appeared on behalf of the State of Gujarat has supported the orders which are impugned in this petition. According to him, the alleged offence under Section 293 is punishable for seven years. There is no guarantee that after release of the said muddamal articles in favour of the petitioner, the petitioner may not give it on rental basis again to such person who would indulge in similar activity, and therefore, orders which are impugned in this petition do not call for interference by this Court in exercise of power conferred under Article 226/227 of the Constitution of India.

5. I have considered submissions advanced by the learned advocates for the parties. I have perused the averments made in the application and the grounds set out therein and both the impugned orders, one which is passed by the learned Magistrate and the second one which is confirmed by the learned Sessions Judge in exercise of power conferred under Section 397 of the Code.

6. At the outset there is no dispute that the petitioner is the owner of the muddamal articles (i.e. projector, screen, amplifier, including all accessories). There is also no dispute that the petitioner has given the said muddamal to the accused no.1 on rental basis. Further, there is also no dispute that the petitioner is dealing in supplying projectors, screens and amplifiers on rental basis. There is also no dispute that the FIR is not lodged against the petitioner.

7. In view of the aforesaid undisputed facts the only question which is called for determination is, whether the alleged offence which is committed by the accused no.1 and others is within the knowledge of the petitioner. It can not be disputed that the person who gives it on rental basis has obviously no knowledge that how and in what manner the projector will be used by the person to whom the projector is given on rental basis. Therefore, according to me, merely on the basis of apprehension that the petitioner had knowledge about the illegal activity of the accused no.1 and if the muddamal article is released on bond, present petitioner would again give it on rental basis to such person who would indulge in similar activity in future, petitioner can not be denied the relief which he has claimed as the said apprehension is misconceived. Besides this, I failed to understand under what provision of law the learned Sessions Judge has ordered to deliver the said muddamal articles to the President of the Rajkot Bar Association, who is neither the owner of the said muddamal nor the complainant. According to me, there is no provision of law to deliver the muddamal articles to any third party who is neither connected with the muddamal nor with the alleged offence. Therefore, order is perverse and ex facie illegal passed on absolutely non-application of mind. Therefore, according to me, the learned Sessions Judge has exceeded his jurisdiction in ordering to deliver the said muddamal to the President of the Rajkot Bar Association, which is without jurisdiction. Therefore, it deserves to be quashed and set aside.

8. In view of the aforesaid discussion, I am of the opinion that the petitioner is the owner of the muddamal

(i.e projector, screen, amplifier and all other accessories except C.D.) and he is entitled to get the said muddamal upon furnishing personal bond as well as solvent surety bond on certain terms and conditions. Therefore, the petition deserves to be allowed.

9. For the foregoing reasons petition succeeds and accordingly it is allowed. Orders which are impugned in this petition are quashed and set aside. Petitioner is entitled to get all the said muddamal articles during pendency of the criminal complaint. Accordingly, it is ordered that the muddamal article (i.e. projector, screen, amplifier and all other accessories except C.D.) which is seized in connection with the offence registered vide C.R. No.II 51/2002 at Pradyumna Police Station, Rajkot shall be returned to the petitioner by way of interim custody pending the trial, on the following terms and conditions:

(a) The petitioner shall furnish a solvent surety bond of an amount of Rs.2,00,000=00 (Rupees Two Lakhs Only) with personal bond of the like amount to the satisfaction of the learned Chief Judicial Magistrate, Rajkot;

(b) The petitioner shall file an undertaking before the Chief Judicial Magistrate, to the effect that the petitioner shall not transfer or part with the possession of the said muddamal nor give it on rental basis to any other person who would indulge in similar activity in future or to those persons who are already indulged in similar activities in past, as per the record of the Police Commissioner, Rajkot.

(c) The petitioner shall produce the said muddamal articles before the trial Magistrate as and when ordered by the trial Magistrate during the course of trial.

8. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(A.M. Kapadia, J.)
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